

“JUST DO IT”: PRAGMATISM AND PROGRESSIVE SOCIAL CHANGE

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WHAT use is pragmatism for achieving progressive social change? This question has been central to the recent renaissance of pragmatism within the legal academy. Not surprisingly, the scholars who have examined this question have shared a core concern: the persistent marginalization and disempowerment of certain groups in our society.¹ More striking, however, is the substantial agreement of these scholars that pragmatism is useful for alleviating oppression in modern America.²

In this Essay I suggest, despite the popularity of claims to the contrary, that pragmatism is of scant use for achieving progressive social change. My analysis focuses on the writings of Richard Rorty for two reasons. First, he is the acknowledged philosophical leader of the recent revival of interest in pragmatism. Second, an examination of Rorty's work uncovers important, and previously undiscussed, incon-

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¹ See, e.g., Mari J. Matsuda, Pragmatism Modified and the False Consciousness Problem, 63 S. Cal. L. Rev. 1763, 1763-64 (1990); Martha Minow & Elizabeth V. Spelman, In Context, 63 S. Cal. L. Rev. 1597, 1601 (1990); Margaret J. Radin, The Pragmatist and the Feminist, 63 S. Cal. L. Rev. 1699, 1699-1700 (1990); Joseph W. Singer, Property and Coercion in Federal Indian Law: The Conflict Between Critical and Complacent Pragmatism, 63 S. Cal. L. Rev. 1821, 1821-22 (1990) [hereinafter Singer, Property]; Allan C. Hutchinson, The Three 'Rs': Reading/Rorty/Radically, 103 Harv. L. Rev. 555, 563-66, 571 (1989) (reviewing Richard Rorty, Contingency, irony, and solidarity (1989)); Joseph W. Singer, Should Lawyers Care About Philosophy?, 1989 Duke L.J. 1752, 1765-66 [hereinafter Singer, Should Lawyers Care] (reviewing, inter alia, Richard Rorty, Contingency, irony, and solidarity (1989)).

² See, e.g., Matsuda, supra note 1, at 1764-68; Minow & Spelman, supra note 1, at 1600-01, 1609-15, 1647-52; Radin, supra note 1, at 1705-19; Singer, Property, supra note 1, at 1822-24; Hutchinson, supra note 1, at 566-73, 583-85; Singer, Should Lawyers Care, supra note 1, at 1759-66.

sistencies in his own assessment of pragmatism's usefulness for progressive social change.

I begin by analyzing two distinct, but previously unseparated, strands in Rorty's discussion of progressive social change, which I term the "prophetic" and the "processual." In Part II, I examine two popular responses of the legal academy to Rorty's views: criticism of his seeming defense of the status quo, and praise of his concern for marginalized people. I argue that, in both instances, the response may be problematic if it fails to distinguish between the different strands in Rorty's view of progressive social change.

In Parts III and IV, I evaluate *by Rorty's own pragmatist terms* his claims for a pragmatist ("postmetaphysical") culture. Part III examines whether the postmetaphysical culture that Rorty advocates would have any advantages over our current foundationalist one for achieving progressive social change as Rorty defines it. Part IV considers whether, regardless of the background culture, the prophets who are necessary for progressive social change under Rorty's view would be better served by subscribing to pragmatism or to foundationalism.

I. RORTY ON PROGRESSIVE SOCIAL CHANGE

Legal scholars have discussed Richard Rorty's views on progressive social change as if they were of a single genus. Close analysis of a wide range of Rorty's essays and books, however, reveals two distinct strands in his work: the "prophetic" and the "processual." Identifying and separating these threads is necessary for understanding both Rorty's claims and legal scholars' (mis)conceptions of them.

The prophetic strand in Rorty's discussion of progressive social change can itself be divided into two subparts. One is his vision of a better world. The other is his suggested vehicles for traveling from the present to that better world. The processual strand, in contrast, consists of Rorty's description of the *process or mechanism by which* his proposed vehicles move us closer to the better world he imagines. Thus, one might agree with Rorty about the likely efficacy of a suggested vehicle for reaching his utopia (prophetic strand), but disagree about the mechanism by which that vehicle will move us along the route of progressive social change (processual strand).

The central element of Rorty's prophetic strand is his definition of progressive social change. Although he frequently eschews the notion

of progress, Rorty is willing to employ it in the context of social change. According to Rorty, progressive social change is that which moves a society closer to realizing his three interrelated aspirations: that suffering and cruelty will be diminished;³ that freedom will be maximized;⁴ and that “chances for fulfillment of idiosyncratic fantasies will be equalized.”⁵ Rorty derives these hopes from his premise that “the aim of a just and free society [is] letting its citizens be as privatistic, ‘irrationalist,’ and aestheticist as they please so long as they do it on their own time—causing no harm to others and using no resources needed by those less advantaged.”⁶

Rorty does not attempt a theoretical or metaphysical defense of this premise or of the hopes it embodies, “hav[ing] abandoned the idea that those central beliefs and desires refer back to something beyond the reach of time and chance.”⁷ They are simply “ungroundable desires” for which there is “no noncircular theoretical backup.”⁸

Rorty’s prophetic strand also encompasses his suggestions concerning the vehicles we might use to move to the better world he envisions. Rorty repeatedly asserts: “There is no method or procedure to be followed except courageous and imaginative experimentation.”⁹ Nonetheless, he suggests two vehicles by which social progress has occurred in the past and might occur in the future: narratives and separatist groups. Rorty does not mean to imply, however, that these are the only two vehicles by which social change has occurred or could someday occur; they are simply the two that he thus far has chosen to examine at greatest length.

Thus, Rorty’s prophetic strand consists of his three hopes and the premise from which they are derived, as well as his suggestion of nar-

³ Richard Rorty, *Contingency, irony, and solidarity* at xv (1989).

⁴ *Id.* at 60 (“an ideal liberal society is one which has no purpose except freedom”); Richard Rorty, *Consequences of Pragmatism* 69-70 (1982) (there is “no better cause” than “enlarging human freedom”) (quoting Sidney Hook, *Pragmatism and the Tragic Sense of Life* 25 (1974)).

⁵ Rorty, *supra* note 3, at 53.

⁶ *Id.* at xiv.

⁷ *Id.* at xv.

⁸ *Id.*

⁹ Richard Rorty, *Feminism and Pragmatism*, 30 *Mich. Q. Rev.* 231, 242 (1990) [hereinafter Rorty, *Feminism and Pragmatism*]; see also Richard Rorty, *Thugs and Theorists: A Reply to Bernstein*, 15 *Pol. Theory* 564, 565 (1987) (“There is nothing sacred about either the free market or about central planning; the proper balance between the two is a matter of experimental tinkering.”).

ratives and separatist groups as the vehicles for realizing these hopes. Rorty's processual strand, in contrast, consists of his account of the processes or mechanisms by which the vehicles of narratives and separatist groups would transport us to his better world.

By narratives, Rorty means novels, docudramas, ethnographies, and journalists' reports, for example, that provide "detailed descriptions of particular varieties of pain and humiliation."¹⁰ According to Rorty, the narrative can be authored by one of the oppressed or by someone else, and is an attempt to interpret the situation of the oppressed group to the rest of their society. Such narratives increase human solidarity by expanding the sympathies of persons who are not members of the oppressed group so that they come to see the oppressed as an "us" rather than as a "them."¹¹ Increased human solidarity, however, does not constitute an "us" admitting a "them" to membership through an act of noblesse oblige. Rather, according to Rorty, the narrative process of interpretive description encompasses the non-oppressed as well as the oppressed; it "is a matter of detailed description of what unfamiliar people are like *and of redescription of what we ourselves are like.*"¹²

Through narratives we each may come to know better not only persons with whom we do not (yet) identify, but also "the tendencies to cruelty inherent in searches for autonomy" that we ourselves possess,¹³ the "sorts of cruelty we ourselves are capable of."¹⁴ In this way, we each may become more generally aware of, and more sensitive to, the suffering around us and our role in causing it.¹⁵ "Such increased sensitivity," according to Rorty, "makes it more difficult to marginalize people different from ourselves by thinking, 'They do not feel it as *we* would,' or 'There must always be suffering, so why not let *them* suffer?'"¹⁶ Solidarity, then, is "the ability to see more and more

¹⁰ Rorty, *supra* note 3, at 192.

¹¹ *Id.* at xvi. "[O]ur sense of solidarity is strongest when those with whom solidarity is expressed are thought of as 'one of us,' where 'us' means something smaller and more local than the human race." *Id.* at 191.

¹² *Id.* at xvi (emphasis added).

¹³ *Id.* at 144.

¹⁴ *Id.* at xvi.

¹⁵ *Id.* at 93.

¹⁶ *Id.* at xvi.

traditional differences . . . as unimportant when compared with similarities with respect to pain and humiliation."¹⁷

Among existing narratives, Rorty classifies the work of Charles Dickens, Olive Schreiner, and Richard Wright as detailing the "kinds of suffering being endured by people to whom we had previously not attended."¹⁸ The work of Choderlos de Laclos, Henry James, and Vladimir Nabokov, in contrast, depicts the "sorts of cruelty we ourselves are capable of."¹⁹

A second vehicle that Rorty suggests might enable society to progress toward his utopian vision is separatist groups. The creation of a separatist group requires that at least one member of the oppressed group have "the imagination it takes to hear oneself as the spokesperson of a merely possible community, rather than as a lonely, and perhaps crazed, outcast from an actual one."²⁰ That courageous individual will begin to work out a new story about who she is, which will require that she hear her own statements as part of a shared practice in order to achieve semantic authority over even herself.²¹ Thus, according to Rorty, she may persuade other members of the oppressed group to band together with her in an exclusive club in order to "try out new ways of speaking, and to gather the moral strength to go out and change the world."²² As examples of such clubs, Rorty cites the contemporary feminist movement, Plato's Academy, the early Christians who met in the catacombs, the seventeenth century underground Copernican colleges, and the workers who gathered to discuss Tom Paine's pamphlets.²³

Changing the world is a risky business. The separatist group may be ruthlessly suppressed, its members thus doubly oppressed. Preferably, however, over generations "those in control [will] gradually find their conceptions of the possibilities open to human beings changing" and "[t]he new language spoken by the separatist group [will] gradually get woven into the language taught in the schools."²⁴ That is, the

¹⁷ *Id.* at 192.

¹⁸ *Id.* at xvi.

¹⁹ *Id.*

²⁰ Rorty, *Feminism and Pragmatism*, *supra* note 9, at 240.

²¹ *Id.* at 247.

²² *Id.*

²³ *Id.*

²⁴ *Id.* at 248.

formerly oppressed group gradually achieves “‘full personhood’ in the eyes of everybody, having first achieved it only in the eyes of fellow-members of their own club.”²⁵ According to Rorty, the test of whether full personhood has been achieved is whether powerful people in the society (still) thank God that they do not belong to the (formerly) oppressed group.²⁶

To summarize Rorty’s processual strand: Separatist groups move society toward Rorty’s utopian vision through their creation of new linguistic practices; narratives do so through an expansion of individual empathy. This distinction is not intended, however, to obscure the obvious interrelatedness of the two mechanisms: The creation of new linguistic practices can occur simultaneously with, cause, or result from an expansion of individual empathy. Thus, Rorty also describes narratives as “aimed at working out a new *public* final vocabulary . . . , a vocabulary deployed to answer the question ‘What sorts of things about what sorts of people do I need to notice?’”²⁷ Similarly, he portrays separatist groups as “trying to get people to feel indifference or satisfaction where they once recoiled, and revulsion and rage where they once felt indifference or resignation.”²⁸

At the center of both the narrative and separatist processes of progressive social change, as Rorty describes them, is a prophet—an interpreter or a leader with a vision of a better world. The author(s) of a narrative must have both a vision and a sense of how to translate the experiences of either the oppressed group or the cruel group into a language that is not only understandable but transformative. Similarly, the leader of a separatist group must not only be able to suggest particular ways in which a society’s language and institutions might be changed, but also must have a vision that includes “some sort of blueprint for the results of transformation (in the way in which Jefferson and Adams, or Lenin and Trotsky, did, and Abbie Hoffman did not).”²⁹ Above all else, then, both the narrator and the leader of a separatist group must have imagination—and sometimes a special kind of courage.

²⁵ *Id.*

²⁶ *Id.*

²⁷ Rorty, *supra* note 3, at 143.

²⁸ Rorty, *Feminism and Pragmatism*, *supra* note 9, at 233.

²⁹ Richard Rorty, *Two Cheers for the Cultural Left*, 89 *S. Atlantic Q.* 227, 229 (1990).

Given the above analysis of the prophetic and processual strands in his work, what unique contribution does Rorty's pragmatism make to his views on progressive social change? This issue can be examined without confronting the vastly larger and less tractable challenge of defining pragmatism by focusing on pragmatism's anti-foundationalist core: the claim that "metaphysical entities" such as "reality," "truth," and "nature" are not "warrants for certitude."³⁰ In the context of social change, this anti-foundationalism more specifically entails: (1) recognizing the pervasiveness of contingency; (2) rejecting metaphysical notions when conceptualizing or evaluating processes of social change; and (3) avoiding metaphysical notions when constructing or evaluating arguments for (or against) social change.

Applying these criteria to Rorty's prophetic strand, there appears to be nothing distinctly anti-foundationalist ("pragmatist") about his premise concerning "the aim of a just and free society,"³¹ or the three hopes he believes that premise embodies, or his choice of narratives and separatist groups as vehicles for realizing these hopes. Indeed, the only anti-foundationalist aspect of Rorty's prophetic strand is the way he "justifies" its various aspects. Rorty's claim that his premise simply embodies "ungroundable desires" for which there is "no noncircular theoretical backup"³² is an example of pragmatism's anti-foundationalist distrust of metaphysical entities as warrants for certitude. Another example of this distrust is Rorty's suggestion that "[w]e should learn to brush aside questions like 'How do you *know* that freedom is the chief goal of social organization?' " and instead "should see allegiance to social institutions as no more matters for justification by reference to familiar, commonly accepted premises—but also as no more arbitrary—than choices of friends or heroes."³³

Pragmatism's anti-foundationalist acknowledgment of contingency dictates this approach to justification: Choices of prophecies (and, therefore, of social institutions) "cannot be preceded by presupposi-

³⁰ Judge Richard Posner has posited "three 'essential' elements" of pragmatism: (1) "a distrust of metaphysical entities . . . viewed as warrants for certitude"; (2) "an insistence that propositions be tested by their consequences, by the difference they make"; and (3) "an insistence on judging our projects . . . by their conformity to social or other human needs rather than to 'objective,' 'impersonal' criteria." Richard A. Posner, *What Has Pragmatism to Offer Law?*, 63 S. Cal. L. Rev. 1653, 1660-61 (1990).

³¹ Rorty, *supra* note 3, at xiv.

³² *Id.* at xv.

³³ *Id.* at 54.

tionless critical reflection, conducted in no particular language and outside of any particular historical context.”³⁴ Thus, Rorty suggests, borrowing from John Rawls, that the justification for his particular vision of a better world “‘is not its being true to an order antecedent and given to us, but its congruence with our deeper understanding of ourselves and our aspirations, and our realization that, given our history and the traditions embedded in our public life, it is the most reasonable doctrine for us.’”³⁵ In the end, Rorty justifies various aspects of his prophecy by invoking an anti-foundationalist, historically contingent congruence rather than a metaphysical correspondence to Truth.

Rorty’s processual strand, in contrast, is anti-foundationalist through and through. In his account of the mechanisms by which separatist groups and narratives effect progressive social change, Rorty portrays neither vehicle as reaching toward a metaphysical truth or an objective reality. Separatist groups and narratives both strive toward “increasingly useful metaphors rather than . . . increasing understanding of how things really are.”³⁶

For Rorty, separatist groups try to create new linguistic practices through which they will forge a more useful identity for persons like themselves within the larger society. Narrators can similarly help us see the effects of our social practices, institutions, and private idiosyncracies, and thereby enable us usefully to redescribe both others and ourselves. The world is changed not as narratives and separatist groups discover and communicate truths, but as they provide useful redescrptions of the world and its inhabitants. For Rorty, “a talent for speaking differently, rather than for arguing well, is the chief instrument of cultural change.”³⁷

In sum, pragmatism’s anti-foundationalist core contributes two important aspects of Rorty’s discussion of progressive social change: the way he justifies various aspects of his prophetic strand, and his account of the mechanisms by which separatist groups and narratives will effect his vision of a better world (his processual strand).

³⁴ *Id.*

³⁵ *Id.* at 58 (quoting John Rawls, *Kantian Constructivism in Moral Theory*, 77 *J. Phil.* 515, 519 (1980)).

³⁶ *Id.* at 9.

³⁷ *Id.* at 7.

II. LEGAL SCHOLARS RESPOND

The above analysis of Rorty's discussion of progressive social change sheds important light on two popular responses by legal academics to Rorty's views. Scholars have applauded Rorty's concern for "marginalized people."³⁸ They have also, however, frequently criticized Rorty for offering a "complacent pragmatism," for providing a conservative "reaffirmation of liberal institutions and practices."³⁹ This Part argues that both of these responses may be problematic if they fail to distinguish between the purely prophetic and the anti-foundationalist (both processual and prophetic) aspects of Rorty's views on progressive social change.

Legal scholars interested in pragmatism have explicitly or implicitly praised Rorty for his statement that "[w]e should stay on the lookout for marginalized people—people whom we still instinctively think of as 'they' rather than 'us.'"⁴⁰ Joseph Singer, for example, has stated that "Rorty is right to advise all of us to be on the lookout for people who are oppressed."⁴¹ And scholars such as Mari Matsuda and Margaret Radin have suggested that pragmatism could be improved by explicitly incorporating a concern for oppressed persons.⁴² It thus seems important to examine Rorty's statement in the larger context of his views on progressive social change.

Rorty's exhortation concerning marginalized people is only one of his many suggestions about how to make our world "much less cruel for a lot of people."⁴³ Elsewhere, for example, he suggests that schools should assign students books that will help them "learn about what it has been like (and often still is like) to be female, or black, or

³⁸ See, e.g., Singer, *Should Lawyers Care*, supra note 1, at 1766; Hutchinson, supra note 1, at 564-66.

³⁹ Hutchinson, supra note 1, at 564; accord Minow & Spelman, supra note 1, at 1611-12, 1650; Singer, *Property*, supra note 1, at 1825-26; Singer, *Should Lawyers Care*, supra note 1, at 1759-66.

⁴⁰ Rorty, supra note 3, at 196.

⁴¹ Singer, *Should Lawyers Care*, supra note 1, at 1766.

⁴² See Matsuda, supra note 1, at 1764 (arguing that to improve pragmatism, she "would weight the pragmatic method to identify and give special credence to the perspective of the subordinated[.] . . . add a first principle of anti-subordination; and . . . claim that the use of pragmatic method with a normative first principle is not inconsistent") (footnote omitted); Radin, supra note 1, at 1708-11 (stating that pragmatism should use the feminist methodology of incorporating the perspective of the oppressed to remedy its "problem of bad coherence").

⁴³ Rorty, supra note 29, at 233.

gay.”⁴⁴ And in *Contingency, irony and solidarity*, Rorty describes his “liberal utopia” at substantial length, and suggests that narratives might help us get there.⁴⁵

Rorty makes these proposals purely as a prophet, not an anti-foundationalist. He is simply setting forth his vision of a better world and suggesting vehicles for its realization. Whether one considers Rorty’s suggestions for a better world to be signs of his political radicalism or conservatism, it is important to recognize that these suggestions are not entailed by his anti-foundationalism. They are simply *not inconsistent* with it. Should any of Rorty’s proposals be tried and found useful, we will have evidence that Rorty is a useful prophet—not evidence that Rorty is a good anti-foundationalist or that anti-foundationalism is useful. Similarly, when Matsuda and Radin suggest improving pragmatism by explicitly incorporating a concern for marginalized people, they would be best understood as supplying a prophecy; and anti-foundationalism may or may not prove useful for effecting their vision of a better world.

Although legal scholars have lauded Rorty for his concern for the oppressed, they also have criticized him for his seeming political conservatism. For example, Joseph Singer writes that Rorty’s “version of pragmatism is inherently conservative because it equates ‘democracy’ and ‘freedom’ with established institutions.”⁴⁶ Allan Hutchinson accuses Rorty of failing to consider that “liberal institutions” have helped to create and sustain social ills such as “patriarchy, racism, economic inequality, and the continual threat of nuclear holocaust and environmental destruction.”⁴⁷ Because they perceive Rorty to be a defender of existing American political institutions and a proponent of liberalism, such scholars have concluded that he is a complacent apologist for the social and political status quo.⁴⁸

To be sure, Rorty does explicitly advocate “the protection of something like the institutions of bourgeois liberal society,”⁴⁹ and he does repeatedly describe himself as a “liberal.”⁵⁰ But his critics impor-

⁴⁴ *Id.*

⁴⁵ See Rorty, *supra* note 3.

⁴⁶ Singer, *Property*, *supra* note 1, at 1825.

⁴⁷ Hutchinson, *supra* note 1, at 564.

⁴⁸ See sources cited *supra* note 39.

⁴⁹ Rorty, *supra* note 3, at 84.

⁵⁰ See, e.g., *id.* at 47, 84, 198.

tantly overlook the larger context in which Rorty makes these statements. The preservation of existing American political institutions is not the focus of Rorty's utopian vision. Nor is his advocacy of their preservation evidence that Rorty has no utopian vision. Rather, those institutions are yet another vehicle for the realization of Rorty's vision, which he has chosen largely by default, and which operates in conjunction with narratives and separatist groups.

Rorty's prophetic strand includes the institutions of liberal society for three reasons. First, Rorty reads "the historical facts" to suggest that without the protection of something like those institutions, a society moves farther away from realizing his three hopes:⁵¹ that suffering and cruelty will be minimized,⁵² freedom will be maximized,⁵³ and "chances for fulfillment of idiosyncratic fantasies will be equalized."⁵⁴ Second, he believes that the institutions of "contemporary liberal society" will affirmatively enable that society to improve itself in the direction of his vision.⁵⁵ Third, Rorty feels he can suggest no alternative to those institutions that would better enable society to move in the direction of his vision.⁵⁶

Thus, the existing American political institutions play a role in Rorty's dream ultimately by default. Indeed, Rorty repeatedly expresses a willingness to reexamine the value of those institutions in light of "practical proposals for the erection of alternative institutions."⁵⁷ He further concedes that his own failure to generate such a proposal is due to his own lack of prophetic imagination.⁵⁸ Or, perhaps more accurately, Rorty's quite substantial prophetic imagination simply does not extend this far.

Critics also have misunderstood Rorty's seeming praise for and advocacy of liberalism. Rorty does not mean the term to signify a complacent acceptance of the political status quo (or the unquestioning adoption of an extant political ideology), but typically uses it as a shorthand for certain aspects of his prophecy. The society that real-

⁵¹ *Id.* at 84-85.

⁵² *Id.* at xv.

⁵³ *Id.* at 60.

⁵⁴ *Id.* at 53.

⁵⁵ *Id.* at 63.

⁵⁶ *Id.* at 197; Rorty, *supra* note 29, at 229; Rorty, *Feminism and Pragmatism*, *supra* note 9, at 253 n.15.

⁵⁷ Rorty, *supra* note 3, at 197; Rorty, *Feminism and Pragmatism*, *supra* note 9, at 253 n.15.

⁵⁸ Rorty, *Feminism and Pragmatism*, *supra* note 9, at 253 n.15.

izes Rorty's three hopes is one that he terms "a liberal utopia"⁵⁹ or "an ideal liberal society,"⁶⁰ not simply a "utopia" or "ideal society." Rorty also uses "liberal" to describe people who share the hopes at the core of his prophecy. "[T]hat cruelty is the worst thing we do," for example, he repeatedly describes as "the liberal's claim."⁶¹

Most importantly, however, Rorty uses the term "liberal" to help establish the historical roots of his dream of an "ideal liberal society."⁶² Rorty considers his three hopes for society to be importantly consistent with "a historical narrative" about existing institutions and customs that he also describes as "liberal": "the institutions and customs which were designed to diminish cruelty, make possible government by the consent of the governed, and permit as much domination-free communication as possible to take place."⁶³ Rorty's critics may be confusing this anti-foundationalist historicism and acknowledgment of contingency with political conservatism.

In discussing the three hopes at the core of his prophecy, Rorty repeatedly acknowledges his inability to escape the past entirely. Rorty reminds us, invoking Neurath's image, that we are people on a ship at sea, prevented from realizing our most radical visions of a new and better ship by our inability to replace all of the existing ship's planks at once.⁶⁴ Prophetic imagination freed completely from history is perceived as madness. Thus, to be effective, any prophecy (including Rorty's) must be the product of varying degrees of both imagination and history.

It is in this context that one must consider Rorty's acknowledgment that "the contingencies of history" make it difficult for him (and us) to "see the kind of individual freedom which the modern liberal

⁵⁹ Rorty, *supra* note 3, at xv.

⁶⁰ *Id.* at 60.

⁶¹ See, e.g., *id.* at 197, xv, 63-68.

⁶² *Id.* at 84.

⁶³ *Id.* at 68.

⁶⁴ [W]e can *understand* the revolutionary's suggestion that a sailable boat can't be made out of the planks which make up ours, and that we must simply abandon ship. But we cannot take his suggestion seriously. . . . Our community—the community of the liberal intellectuals of the secular modern West—wants to be able to give a *post factum* account of any change of view. We want to be able, so to speak, to justify ourselves to our earlier selves. This preference is not built into us by human nature. It is just the way we live now.

Richard Rorty, *Solidarity or Objectivity?*, in *Objectivity, Relativism, and Truth* 21, 29 (1991).

state offers its citizens as just one more value.”⁶⁵ Similarly, Rorty attributes his (our) ideal of a society in which pain and cruelty are minimized to his (our) historically contingent socialization process and “the sense of human solidarity which the development of democratic institutions has facilitated.”⁶⁶ But the past neither wholly determines nor wholly constitutes Rorty’s prophecy. History simply provides the inescapable roots of Rorty’s own imaginative flower: a “poeticized” culture.⁶⁷

In sum, scholars who laud Rorty’s concern for marginalized people praise his prophecy, not his pragmatism. In contrast, scholars who find fault with Rorty’s defense of existing American political institutions disapprove of part of his prophecy, and/or disagree with his assessment of the constraints anti-foundationalism imposes on the current pursuit of his better world.

III. THE RELATIONSHIP BETWEEN PROPHECY AND ANTI-FOUNDATIONALISM

In their haste to criticize Rorty for complacently defending the status quo, legal scholars have failed to raise a potentially much more devastating issue. They have never undertaken to evaluate, *by Rorty’s own pragmatist terms*, his claims for a postmetaphysical culture in the context of progressive social change. What use is anti-foundationalism for achieving progressive social change as Rorty defines it? Or, in other words, what is the relationship between prophecy, which Rorty suggests is necessary for progressive social change, and the anti-foundationalism that he advocates? Despite the centrality of this issue, Rorty, like his critics, never directly confronts it.

Certainly a society that has given up metaphysics for anti-foundationalism would still need progressive social change (and, therefore, prophets such as narrators and separatist group leaders). To suggest otherwise would be to hold out anti-foundationalism as the Truth toward which the world has been converging—and Rorty, as an anti-foundationalist, explicitly rejects the metaphysical notion that the world is “converg[ing] toward an already existing Truth.”⁶⁸

⁶⁵ Rorty, *supra* note 3, at 50.

⁶⁶ *Id.* at 197.

⁶⁷ *Id.* at 53.

⁶⁸ *Id.* at xvi.

Would the postmetaphysical culture that Rorty advocates have any advantages over our current metaphysical one for achieving progressive social change? To begin, there are several pertinent differences between an anti-foundationalist culture, as Rorty describes it, and the existing metaphysical one. First, members of an anti-foundationalist culture would understand that everything—"our language, our conscience, our community"—is a product of contingency, time, and chance.⁶⁹ They would therefore be "people who combined commitment with a sense of the contingency of their own commitment."⁷⁰ Second, their pervasive sense of contingency would make them skeptical that any status quo was either necessary or the best possible world.⁷¹ Third, members of an anti-foundationalist culture would not employ, or be receptive to, foundationalist vocabulary and forms of argument.⁷² They would not use words like "truth," "nature," "reality," and "reason" as warrants for certitude. Their "arguments," therefore, would more often be suggestions that others simply try thinking of things in a different (and perhaps more useful) way, or suggestions that it might be more effective to stop doing some things in favor of doing others.⁷³ Fourth, a postmetaphysical culture will have made "a general turn against theory and toward narrative."⁷⁴ According to Rorty, "[s]uch a turn would be emblematic of our having given up the attempt to hold all the sides of our life in a single vision, to describe them with a single vocabulary."⁷⁵ Finally, members of an anti-foundationalist culture would conceive of progressive social change as a seemingly endless process of "the realization of utopias and the envisaging of still further utopias."⁷⁶

Assuming, *arguendo*, that a postmetaphysical culture will have the characteristics Rorty ascribes to it, what will that mean for progressive social change? Consider, first, the members of the society in which a prophet such as a narrator or a separatist group leader will be working. Will a postmetaphysical culture be more likely to join with

⁶⁹ *Id.* at 22.

⁷⁰ *Id.* at 61.

⁷¹ *Id.* at xv-xvi, 61.

⁷² *Id.* at 79.

⁷³ *Id.*

⁷⁴ *Id.* at xvi.

⁷⁵ *Id.*

⁷⁶ *Id.* This process would yield "a history of increasingly useful metaphors rather than of increasing understanding of how things really are." *Id.* at 9.

a prophet in realizing her vision of a less cruel world, or more likely than present society to be moved by a narrator toward increased human solidarity? There seems little reason to believe so, despite Rorty's inconsistent, but often hopeful, claims.

At his most optimistic, Rorty asserts that for "the preservation and progress of democratic societies," an anti-foundationalist vocabulary centered on "notions of metaphor and self-creation" is preferable to a metaphysical vocabulary based on "notions of truth, rationality, and moral obligation."⁷⁷ Indeed, he claims that this latter vocabulary of Enlightenment rationalism has begun to hinder social progress.⁷⁸ In a similarly enthusiastic vein, Rorty asserts that "reformulat[ing] the hopes of liberal society in a nonrationalist and nonuniversalist way . . . [will] further[] their realization better than older descriptions of them did."⁷⁹

At other times, however, Rorty's claims for an anti-foundationalist culture are substantially weaker and more tentative. With regard to progressive social change, Rorty states that an anti-foundationalist culture (in which the "nonintellectuals" are "commonsensically nominalist and historicist") could "be every bit as self-critical and every bit as devoted to human equality as our own familiar, and still metaphysical, liberal culture—if not more so."⁸⁰ More tentatively, he assures us that the public's adoption of anti-metaphysical, anti-essentialist views at least will not "weaken and dissolve liberal societies."⁸¹ Rorty adds, with even less optimism, that individuals whose lives are given meaning by the modern, liberal hope "that life will eventually be freer, less cruel, more leisured, richer in goods and experiences, not just for our descendants but for everybody's descendants,"⁸² are unlikely to be interested in, much less adversely affected by, philosophers who are questioning metaphysics.⁸³ At his least hopeful, Rorty concedes the possibility that shifting to an anti-foundationalist culture "would weaken and dissolve liberal societies."⁸⁴

⁷⁷ *Id.* at 44.

⁷⁸ *Id.*

⁷⁹ *Id.* at 44-45.

⁸⁰ *Id.* at 87.

⁸¹ *Id.* at 85.

⁸² *Id.* at 86.

⁸³ *Id.* "The idea that liberal societies are bound together by philosophical beliefs seems to me ludicrous." *Id.*

⁸⁴ *Id.* at 85.

Rorty never supports his more optimistic claims for anti-foundationalism with explanations of how or why anti-foundationalist vocabulary and reformulations of social hopes would be *superior* to metaphysical ones for achieving progressive social change. Can a persuasive case nonetheless be made that anti-foundationalism would be *more useful* than metaphysics for achieving progressive social change as Rorty defines it? Rorty seems to imply that one advantage of an anti-foundationalist culture is its potentially greater revisability. In the present culture, metaphysics anchors the bulk of our beliefs, some of which may impede social progress. So, the argument goes, eliminating those metaphysical anchors might yield a more revisable culture.

There are several problems with this reasoning. First, greater revisability alone does not increase the likelihood that changes occurring in society will be in any one direction. Revisability, after all, is as much a precondition for a society moving *away* from Rorty's vision of a better world as it is for moving *toward* it. Second, any metaphysical notion, such as religion or truth, that might impede progressive social change also might expedite it. Martin Luther King, Jr., for example, had a utopian vision not unlike Rorty's. That he was a minister and frequently invoked religious concepts when advocating social change did not diminish his influence as a prophet, but rather was much of the source of it. Similarly, an anti-foundationalist society may be *less* inclined to follow a prophet promising only a contingent vision of a better world than a metaphysical society will be to follow a prophet asserting that moral truth or God is on her side. The latter prophet, for example, may be relatively better at inspiring and motivating, at capturing the imagination of her society. Thus, it is far from clear that an anti-foundationalist culture would be more revisable in the direction of social progress, or that it would have more (or more influential) prophets sharing Rorty's vision of a better world.

In the end, Rorty persuades one only of that for which no persuading was necessary: An anti-foundationalist culture *by definition* will be different from our foundationalist one. Notwithstanding his general claim that a postmetaphysical culture would be preferable to our metaphysical one, Rorty does not convincingly establish that a cultural shift to anti-foundationalism would be advantageous for realizing even his own utopian vision.

IV. PRAGMATIC PROPHETS

If our culture does not move from foundationalism to anti-foundationalism, would subscribing to the latter nonetheless be of greater use to prophets than a belief in metaphysics? Throughout his writings, Rorty's answer to this question seems to waiver between "no" and "yes, quite a bit."

At one extreme, Rorty states that pragmatism has nothing to offer those with a vision of a better world: "[I]t seems to me that if you had the prophecy, you could skip the pragmatism."⁸⁵ In addition, Rorty has described pragmatism in the context of progressive social change as "something comparatively small and unimportant, a set of answers to philosophical questions—questions which arise only for people who find philosophical topics intriguing rather than silly."⁸⁶ Thus, Rorty notes that "pragmatism bites other philosophies, but not social problems as such—and so is as useful to fascists like Mussolini and conservatives like Oakeshott as it is to liberals like Dewey."⁸⁷

At the other extreme, however, is the bulk of Rorty's recent Tanner Lecture, "Feminism and Pragmatism."⁸⁸ There he states that feminist prophets with a vision of a better world, such as Catherine MacKinnon and Marilyn Frye, might profit from "thinking with the pragmatists."⁸⁹ With seeming modesty, Rorty claims that "All we [anti-foundationalists] can do is to offer feminists a few pieces of special-purpose ammunition—for example, some additional replies to charges that their aims are unnatural, their demands irrational, or their claims hyperbolic."⁹⁰ Rorty goes on, however, to detail three much more important ways that he believes anti-foundationalism might be useful to feminist prophets. First, anti-foundationalism affords these prophets a way to conceptualize the process of progressive social change and, therefore, their job.⁹¹ Second, and related, anti-foundationalism equips them with a rhetoric—a vocabulary and form of argument—for use with those they are trying to persuade.⁹²

⁸⁵ Afterword, 63 S. Cal. L. Rev. 1911, 1917 (1990).

⁸⁶ Rorty, *Feminism and Pragmatism*, supra note 9, at 238.

⁸⁷ Id. at 255 n.23.

⁸⁸ Rorty, *Feminism and Pragmatism*, supra note 9.

⁸⁹ Id. at 237.

⁹⁰ Id. at 238.

⁹¹ Id. at 233-36, 238, 240-41, 246-49.

⁹² Id. at 236-42.

Third, anti-foundationalism offers feminist prophets a kind of moral support.⁹³

Both of Rorty's rather extreme positions cannot be correct. Indeed, close examination of Rorty's three more ambitious claims for anti-foundationalism finds them unpersuasive.

First, Rorty states that pragmatist philosophy might aid feminist politics because of the way the former conceptualizes and re-describes social progress: "by substituting metaphors of evolutionary development for metaphors of progressively less distorted perception," and "by drop[ping] the appearance-reality distinction in favor of a distinction between beliefs which serve some purposes and beliefs which serve other purposes."⁹⁴ Rorty adds that feminists can easily fit their claim that a new voice is needed into a pragmatist view of moral progress.⁹⁵

But will prophets really profit from conceptualizing the societal change they advocate as part of a larger, endless evolutionary process? Not necessarily. For such a conceptualization to be useful, it should somehow make the prophet's work easier or more effective. Rorty does not make a case that this conceptualization, without more, would be useful in this way. Nor is such an argument easy to generate. Indeed, an anti-foundationalist conception of social change as evolution may dilute both the prophet's belief in her own vision and her motivation to effect social change. It is one thing to believe, as a prophet by definition does, that the status quo is neither necessary nor the best possible state of affairs; but it is quite another to believe that the better world one envisions and would work toward achieving is also a contingency, a mere resting point in a larger evolution.

Rorty claims that the recognition of contingency underlying the anti-foundationalist conception of social change need not dilute the prophet's sense of conviction in her vision. He argues that "a belief can still regulate action, can still be thought worth dying for, among people who are quite aware that this belief is caused by nothing deeper than contingent historical circumstance."⁹⁶ Perhaps. But the question still remains as to whether this recognition of contingency

⁹³ Id. at 235-36, 241-42.

⁹⁴ Id. at 234.

⁹⁵ Id. at 236. This is one pertinent advantage that Rorty claims pragmatism has over universalism and realism. Id. at 235-36.

⁹⁶ Rorty, *supra* note 3, at 189.

makes the prophet *more* effective in any way. Rorty makes no case that it does.

Rorty's second claim is that anti-foundationalism offers feminist prophets useful rules of rhetoric. He suggests that feminists quit invoking "an ahistoricist realism" through the use of phrases like "in truth" and "in reality," and instead see themselves as creating a new language through which they would simultaneously be fashioning what they did not before have: "a moral identity *as* women."⁹⁷ Rorty promises that with new, anti-foundationalist linguistic practices come new social constructs.⁹⁸

In addition to abandoning their old universalist and realist rhetoric, Rorty suggests that feminists should use substantively different arguments in attempting to persuade others to their view. Feminists, he argues, should "drop[] the notion that the subordination of women is *intrinsically* abominable, drop[] the claim that there is something called 'right' or 'justice' or 'humanity' which has always been on their side, making their claims true."⁹⁹ Instead, they should "just make invidious comparisons between the actual present and a possible, if inchoate, future."¹⁰⁰ This is the only form of argument left, Rorty notes, when "one sees the need for something more than an appeal to rational acceptability by the standards of the existing community."¹⁰¹

There are two problems with Rorty's suggestions. As Rorty himself acknowledges, anti-foundationalism cannot provide prophets (or anyone else) with a *method* for selling their visions (or doing anything else): "There is no method or procedure to be followed except courageous and imaginative experimentation."¹⁰² And, as Rorty also notes, the extent to which metaphysics holds sway in our world means that "practical politics will doubtless often require feminists to speak with the universalist vulgar . . ."¹⁰³ Indeed, anti-foundationalist rhetoric and arguments would seem to be of questionable use to prophets who are selling their vision to a foundationalist society.

⁹⁷ Rorty, *Feminism and Pragmatism*, supra note 9, at 236-37 (emphasis added).

⁹⁸ *Id.* at 236.

⁹⁹ *Id.* at 237.

¹⁰⁰ *Id.* at 242.

¹⁰¹ *Id.* at 239.

¹⁰² *Id.* at 242.

¹⁰³ *Id.* at 237.

Third, Rorty would have feminist prophets who are feeling discouraged look to anti-foundationalism for a kind of moral support. Rorty claims that anti-foundationalism and variants of political radicalism such as feminism are compatible and mutually supportive “because pragmatism allows for the possibility of expanding logical space, and thereby for an appeal to courage and imagination rather than to putatively neutral criteria.”¹⁰⁴ In addition, Rorty urges feminists to have faith in their vision of a better world: “Prophecy, as we [pragmatists] see it, is all that non-violent political movements can fall back on when argument fails.”¹⁰⁵ To be sure, some (rather intellectual) feminist prophets may be bolstered by Rorty’s exhortation. But then will not anti-foundationalism have become for the prophet what Rorty has claimed, with some disdain, that metaphysical entities are for the realist and universalist: “something large and powerful” that is on one’s side and enables one to keep trying?¹⁰⁶

In sum, neither the visionary nor the persuasive/political part of every prophet’s job appears to be aided by a belief in anti-foundationalism.¹⁰⁷ Certainly a belief in anti-foundationalism seems neither necessary nor sufficient for actually becoming a prophet. Even Rorty disclaims its necessity:

Prophets are wherever you find them. The great heroes—the prophetic leaders—in eastern Europe now are a faceless bureaucrat, Gorbachev, and a playwright, Havel.

. . . . I don’t know who our [American] analogues of Havel and Gorbachev are going to be. *But I doubt very much that they will take their inspiration either from deconstruction or from neopragmatism.*¹⁰⁸

In addition, already implicit in Rorty’s notion of the prophet’s dream are two of the contributions that a belief in anti-foundationalism might be able to make: skepticism about the status quo, and an understanding that social progress is not about reasoning from first principles, but about responding to human needs, about what works (or might work).

¹⁰⁴ Id. at 242.

¹⁰⁵ Id. at 235.

¹⁰⁶ Id. at 254 n.21.

¹⁰⁷ As Rorty defines her, a prophet has two chief characteristics: a vision of a better world and a voice to describe that dream. Id. at 232.

¹⁰⁸ Afterword, *supra* note 85, at 1917-18 (emphasis added).

Nor is a belief in anti-foundationalism *sufficient* for becoming a prophet: After all, not all of the existing self-proclaimed pragmatists are prophets.

Thus, despite Rorty's broader claims, he persuades one ultimately that anti-foundationalism might be useful only to especially intellectual prophets, and only when they need to extricate themselves from philosophical or theoretical hassles. Rorty convinces one only that if highly intellectual feminists redescribe themselves and their project in anti-foundationalist terms, they might free themselves from the "philosophical" demand for a "general theory of oppression."¹⁰⁹

V. CONCLUSION

Notwithstanding the claims of many legal scholars, and sometimes Richard Rorty, pragmatism is of scant use for alleviating oppression in American society. Rorty's own discussion of progressive social change is deceptive on this score because it contains both a prophetic and a processual strand. And pragmatic anti-foundationalism entails the substance of only the latter strand. Thus, Rorty's exhortation to look out for marginalized people is best understood as dictated by his prophecy, not his pragmatism. In contrast, Rorty's defense of existing American political institutions indicates neither conservatism nor the absence of a utopian vision; rather, it is the result of his pragmatist historicism and acknowledgment of contingency in contemplating the vehicles for realizing his prophecy.

The central issue that neither Rorty nor his critics has confronted is whether, by Rorty's own pragmatist terms, he shows anti-foundationalism to be useful for realizing his own utopian vision. I have argued in this Essay that he does not. Evaluating Rorty's claims for anti-foundationalism by his own pragmatist criterion of "usefulness" points up two distinct strands within pragmatism: anti-foundationalism and instrumentalism. And there would not seem to be any necessary connection between the two strands.

As I have shown, Rorty does not support his more hopeful claims for an anti-foundationalist culture with convincing explanations of how or why that culture will be more useful than our current metaphysical one for achieving progressive social change. Nor has he provided persuasive evidence that subscribing to anti-foundationalism

¹⁰⁹ Rorty, *Feminism and Pragmatism*, supra note 9, at 238.

will be of greater use to prophets than a belief in metaphysics. As a good pragmatist, Rorty cannot therefore be sure that anti-foundationalism is preferable to metaphysics for realizing his—or any other—utopian vision.

In the end, pragmatism appears to be useful in achieving progressive social change to the extent that one profits from statements such as, “There is no method or procedure to be followed except courageous and imaginative experimentation.”¹¹⁰ Or, as the Nike people say, “Just do it.”

¹¹⁰ *Id.* at 242.